

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Matthew Corwin	Team: Squad #10	CCRB Case #: 201803958	<input type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Wednesday, 02/14/2018 2:00 PM	Location of Incident: Jay Street / Metro-Tech Subway Station	Precinct: 84	18 Mo. SOL 8/14/2019	EO SOL 8/14/2019	
Date/Time CV Reported Fri, 05/18/2018 12:10 PM	CV Reported At: CCRB	How CV Reported: In-person	Date/Time Received at CCRB Fri, 05/18/2018 12:10 PM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Mckenzie Jeanfrancois	30306	950631	TB DT30
2. POM Thomas Bodai	12698	957392	TB DT30
3. POF Carmen Maldonado	25367	948380	TB DT30

Officer(s)	Allegation	Investigator Recommendation
A.POM Mckenzie Jeanfrancois	Abuse: Police Officer Mckenzie Jeanfrancois interfered with § 87(2)(b) use of a recording device.	
B.POM Thomas Bodai	Abuse: Police Officer Thomas Bodai interfered with § 87(2)(b) use of a recording device.	
C.POF Carmen Maldonado	Abuse: Police Officer Carmen Maldonado interfered with § 87(2)(b) use of a recording device.	
D.POM Thomas Bodai	Discourtesy: Police Officer Thomas Bodai spoke discourteously to § 87(2)(b)	
E.POM Thomas Bodai	Abuse: Police Officer Thomas Bodai threatened to arrest § 87(2)(b)	
F.POM Thomas Bodai	Discourtesy: Police Officer Thomas Bodai spoke discourteously to § 87(2)(b)	
G.POM Thomas Bodai	Abuse: Police Officer Thomas Bodai threatened § 87(2)(b) with the use of force.	

Case Summary

On May 18, 2018, § 87(2)(b) and § 87(2)(b) filed this complaint as walk-ins at the CCRB. The case was assigned to Investigator Matthew Chaves on May 21, 2018 and was reassigned to Investigator Matthew Corwin on October 17, 2018.

At approximately 2:00 p.m. on February 14, 2018, § 87(2)(b) and her partner, § 87(2)(b) were in the Jay Street MetroTech subway station in Brooklyn when § 87(2)(b) manipulated the turnstile to pass through it without paying a fare. § 87(2)(b) and § 87(2)(b) were then walking down the stairs from the mezzanine level of the station towards the subway platform when Police Officer Mckenzie Jeanfrancois of Transit Bureau District 30 called out to § 87(2)(b) and directed her to walk back up the stairs and come over to where he was standing. Police Officer Thomas Bodai and Police Officer Carmen Maldonado, both of Transit Bureau District 30, were standing next to PO Jeanfrancois. § 87(2)(b) voluntarily went over to the officers, who stood in a semicircle around her. § 87(2)(b) took her phone out of her pocket. PO Jeanfrancois and PO Bodai instructed her to put her phone away (**Allegation A: Abuse of Authority: Interference with Recording**—§ 87(2)(g) and **Allegation B: Abuse of Authority: Interference with Recording**—§ 87(2)(g)). PO Maldonado also allegedly told § 87(2)(b) to put her phone away (**Allegation C: Abuse of Authority: Interference with Recording**—§ 87(2)(g)). Then PO Bodai allegedly said, “Put your fucking phone away or you’re going to get arrested,” (**Allegation D: Discourtesy: Word** and **Allegation E: Abuse of Authority: Threat of Arrest**—§ 87(2)(g) and § 87(2)(b)) and PO Bodai exchanged words and then PO Bodai allegedly said, “That’s why you live in a shelter and I have a job,” (**Allegation F: Discourtesy: Word**—§ 87(2)(g)). PO Jeanfrancois then placed § 87(2)(b) in handcuffs.

While this was going on, § 87(2)(b) was standing near § 87(2)(b) when PO Bodai directed her to move away. § 87(2)(b) yelled at PO Bodai, who then told § 87(2)(b) to “square up,” (**Allegation H: Abuse of Authority: Threat of Force**—§ 87(2)(g)). PO Bodai then left the incident location and PO Jeanfrancois issued a summons to § 87(2)(b) for § 87(2)(b) (**Board Review 01**). § 87(2)(b) was released from handcuffs and she and § 87(2)(b) left and got on the subway.

The investigation obtained cell phone video from a witness, § 87(2)(b) that shows FADO allegations (**Board Review 02**). MTA footage expired by the time the case was filed.



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Findings and Recommendations

Allegation A: Abuse of Authority: Police Officer McKenzie Jeanfrancois interfered with § 87(2)(b) use of a recording device.

Allegation B: Abuse of Authority: Police Officer Thomas Bodai interfered with § 87(2)(b) use of a recording device.

Allegation C: Abuse of Authority: Police Officer Carmen Maldonado interfered with § 87(2)(b) use of a recording device.

Allegation D : Discourtesy: Police Officer Thomas Bodai spoke discourteously to § 87(2)(b)

Allegation E : Abuse of Authority: Police Officer Thomas Bodai threatened to arrest § 87(2)(b)

§ 87(2)(b) was interviewed at the CCRB on May 18, 2018 (**Board review 03**). § 87(2)(b) was interviewed at the CCRB on May 18, 2018 (**Board Review 04**). § 87(2)(b) was interviewed at the CCRB on June 21, 2018 (**Board Review 05**). PO Bodai was interviewed on July 5, 2018 (**Board Review 06**). PO Jeanfrancois was interviewed on July 5, 2018 (**Board Review 07**). PO Maldonado was interviewed on January 03, 2019 (**Board Review 08**).

In her sworn statement, § 87(2)(b) stated that at the start of the interaction, PO Jeanfrancois asked her for her identification and she gave it to him. Approximately two minutes later, she took out her cell phone to record the interaction. PO Jeanfrancois, PO Bodai, and PO Maldonado then instructed § 87(2)(b) to put her phone away, and she told them that she took her phone out because she felt uncomfortable. She was told to put her phone away because she was getting a summons. The officers continued to instruct § 87(2)(b) to put her phone away, but she did not immediately comply. PO Bodai then said, “Put your fucking phone away or you’re gonna get arrested.” § 87(2)(b) ultimately began to tell § 87(2)(b) to comply, and in response, § 87(2)(b) said to § 87(2)(b) that she did not have to. Approximately one minute after taking her phone out, § 87(2)(b) complied and put her phone away. After she put her phone away, PO Jeanfrancois placed her in handcuffs.

In her sworn statement, § 87(2)(b) stated that after PO Jeanfrancois took out his notebook and began writing a summons, § 87(2)(b) took her phone out of her rear pants pocket and held it in one hand at the approximate level of her stomach, angled as though she was reading text or looking at an image. § 87(2)(b) believed that § 87(2)(b) was attempting to record a video because § 87(2)(b) saw the screen of § 87(2)(b)'s phone and it was displaying the camera feed. After approximately five seconds, PO Jeanfrancois told her to put it away, and § 87(2)(b) asked why. At this point, § 87(2)(b) became aware of PO Bodai. § 87(2)(b) believed that he had been standing near the incident for some time because he already appeared upset and seemed to be aware of what had been going on. PO Bodai said “If you don’t put your fucking phone away we’re going to arrest you.” § 87(2)(b) asked, “Why are you getting disrespectful?” PO Bodai then “gently turned” § 87(2)(b) and rear handcuffed her. § 87(2)(b) was able to put her phone in her pocket before getting handcuffed.

§ 87(2)(b) was not present for this part of the incident.

In his statement, PO Bodai stated that he and PO Jeanfrancois spoke with § 87(2)(b) for approximately two minutes, during which time PO Bodai and PO Jeanfrancois asked § 87(2)(b) why she did not pay her fare and told her to provide them with identification. § 87(2)(b)

§ 87(2)(b) refused to provide ID and replied that she was homeless and that she did not have to pay. PO Jeanfrancois told § 87(2)(b) that she could be arrested. It was PO Bodai's understanding that § 87(2)(b) could have been arrested for committing theft of service and not providing ID. PO Bodai clarified that she could have been brought back to the stationhouse to verify her ID, but he and PO Jeanfrancois decided to check her name for warrants via their phones, and, if she did not have any open warrants, to release her with a summons.

§ 87(2)(b) then took out her phone and told PO Bodai and PO Jeanfrancois that she had the right to record them. PO Bodai told her that she did not have the right to have her phone out or to have anything else in her hands while she was being detained. PO Bodai told her that § 87(2)(b) could record the incident from a safe distance. (It was PO Bodai's understanding that, according to the Patrol Guide, individuals who are being detained cannot have anything in their hands for safety reasons.) PO Bodai noted, however, that § 87(2)(b) was not recording the incident. PO Bodai estimated that he and PO Jeanfrancois asked § 87(2)(b) more than five times to put her phone away.

§ 87(2)(b) told PO Bodai and PO Jeanfrancois that she would not put her phone away, so PO Jeanfrancois took the phone out of her hand and then put it into her pocket. Because § 87(2)(b) had refused to comply with officer orders to put her phone away, PO Jeanfrancois placed § 87(2)(b) into handcuffs. PO Bodai denied ever saying anything along the lines of, "Put your fucking phone away or you're going to get arrested." PO Bodai stated that § 87(2)(b) did not make any threats to him or PO Jeanfrancois.

In his statement, PO Jeanfrancois said that § 87(2)(b) initially refused to give him her identification, but he stated that she must have given it to him at some point during the interaction, because he wrote down her identification number in his memo book. § 87(2)(b) also took out her phone and both he and PO Bodai repeatedly told § 87(2)(b) to put her phone away. When asked by the investigation why he told § 87(2)(b) to put her phone away, PO Jeanfrancois explained that when he stops someone he would rather that the stopped individual has nothing in their hands because whatever they have in their hands could potentially be used as an object to throw at him or hit him with. Essentially, he wanted the phone to be put away for his safety and wanted § 87(2)(b) hands to be where he could see them. PO Jeanfrancois denied saying or hearing another officer say, "If you pull out your fucking phone you'll get arrested," or "Put your fucking phone away."

§ 87(2)(b) refused to put her phone away, so PO Jeanfrancois took the phone out of her hand and placed it either in § 87(2)(b) pocket or her purse. § 87(2)(b) began yelling that PO Jeanfrancois was not allowed to do this. When asked by the investigation if § 87(2)(b) took any actions towards him with her body or hands that were physically threatening, PO Jeanfrancois stated that because he was bigger than her, he did not feel threatened but that she was "irate" and moving around. By moving around, PO Jeanfrancois meant that § 87(2)(b) turned away from him and attempted to walk away. PO Jeanfrancois placed § 87(2)(b) in handcuffs after she attempted to walk away.

In her statement, PO Maldonado stated that the officers asked § 87(2)(b) for identification. Initially, § 87(2)(b) refused to hand over identification. PO Maldonado could not recall the types of things that § 87(2)(b) was saying, but she did recall that she was "irate." Eventually, § 87(2)(b) gave an officer her identification. PO Maldonado did not recall if § 87(2)(b) took out her phone at any point. PO Maldonado denied ever telling § 87(2)(b) to put her

phone away. She did not hear PO Bodai or PO Jeanfrancois instruct § 87(2)(b) to put her phone away. She never heard PO Bodai say, “Put your fucking phone away or you’re going to get arrested.” She stated that in response to § 87(2)(b) screaming and cursing at the officers, PO Jeanfrancois placed § 87(2)(b) in handcuffs to diffuse the situation.

It is undisputed that PO Bodai and PO Jeanfrancois told § 87(2)(b) to put her phone away and that either § 87(2)(b) or one of the involved officers did put her phone away.

The Office of the Deputy Commissioner’s Legal Bureau Bulletin Vol. 46 No. 2 states that a person may record public police activity unless the person engages in actions that jeopardize the safety of the officer, the suspect, or others in the vicinity. However, an individual’s right to record police action is not absolute if it amounts to actual obstruction of a police officer’s investigation (**Board Review 09**).

Both PO Bodai and PO Jeanfrancois stated that they told § 87(2)(b) to put away her phone for safety reasons. § 87(2)(g)

§ 87(2)(g)

PO Jeanfrancois, PO Bodai, and PO Maldonado all said that § 87(2)(b) initially refused to provide identification. § 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

Allegation F: Discourtesy: Word: Police Officer Thomas Bodai spoke discourteously to

§ 87(2)(b)

In her sworn statement, § 87(2)(b) stated that when PO Jeanfrancois initially stopped her, he asked her why she had hopped the turnstile. She told him that she was homeless. Later on in the interaction, PO Bodai and § 87(2)(b) were arguing and § 87(2)(b) told PO2 that he was not acting appropriately because he was speaking to her disrespectfully. PO2 said, “That’s why you live in a shelter and I have a job.” § 87(2)(b) said that she lived in a shelter, but she “still looked better” than him.

In her sworn statement, § 87(2)(b) said that at a point the incident, one of the officers had asked § 87(2)(b) why she had not paid her subway fare. In response to that question, § 87(2)(b) had said that she was in a homeless shelter and could not afford the fare. Later on in the incident, in response to § 87(2)(b) being placed in handcuffs, § 87(2)(b) told PO Bodai that his actions were uncalled for. He walked towards her and said something along the lines of, “Oh you think you’re the big bad wolf.” § 87(2)(b) said “I don’t think I’m anybody but you don’t have to be talking to me like this. And you wonder why black people don’t like cops, because you’re acting like this.” In response, PO Bodai turned to § 87(2)(b) and said “You’re a bum. This is why I’m working and you’re not.”

In her sworn statement, § 87(2)(b) stated that once § 87(2)(b) was in handcuffs, the officers were very close to § 87(2)(b) and were speaking “in her ear.” There was a lot of foot traffic at the subway station, so § 87(2)(b) could not make out what the officers were saying. However, she did hear § 87(2)(b) yell, “So what I’m homeless? So what I’m gay? I’m going to be alright,” in response to something said to her by an officer. § 87(2)(b) also heard § 87(2)(b) yell, “So what? They’re making fun of me because I’m homeless. I’m going to be alright.” One of the officers said, “Oh you’re homeless, but you have an Iphone?” Aside from that comment, § 87(2)(b) did not hear any other specific comments regarding § 87(2)(b) housing status.

In his statement, PO Bodai stated he and PO Jeanfrancois asked § 87(2)(b) why she did not pay her fare and she replied that she was homeless and that she did not have to pay. PO Bodai denied making any comments or asking any questions about § 87(2)(b) economic status. PO Bodai thought that § 87(2)(b) was “humiliated” when he and PO Jeanfrancois asked her why she did not pay her fare because there were approximately five to 10 people watching the incident unfold. PO Bodai suspected that she was embarrassed because she had to explain, in front of those onlookers, that she was homeless. It had not been PO Bodai’s intention to “humiliate” or otherwise embarrass § 87(2)(b) with this question.

In his statement, PO Jeanfrancois stated that at an unspecified point in the incident he thought he heard PO Bodai ask § 87(2)(b) why she had not paid her fare, although he could not say for sure. He could not say if she answered the question. PO Jeanfrancois did not himself say or hear any other officers say anything in relation to § 87(2)(b) homelessness.

In her statement, PO Maldonado said she did not recall if § 87(2)(b) gave a reason why she evaded fare. PO Maldonado also stated that she did not recall if there was any discussion about

where § 87(2)(b) lived. She did not recall if she ever obtained § 87(2)(b) identification. PO Maldonado did not recall if she ever became aware of the fact that § 87(2)(b) was homeless and she did not ever hear PO Bodai say, “That’s why you live in a shelter and I have a job,” or anything else that had to do with § 87(2)(b) homelessness.

§ 87(2)(g)

Allegation G—Abuse of Authority: Police Officer Thomas Bodai threatened § 87(2)(b) with the use of force.

In her statement, § 87(2)(b) stated that while she was handcuffed, § 87(2)(b) was standing a few feet away from her trying to calm § 87(2)(b) down. As she did so, PO Bodai directed his attention to § 87(2)(b) and he instructed her to back away. § 87(2)(b) complied. As she was backing away, § 87(2)(b) yelled at PO Bodai that he should not be touching § 87(2)(b) because she’s a female. PO Bodai then told § 87(2)(b) to “square up.” § 87(2)(b) explained that the phrase was slang for challenging someone to a fight.

In her statement, § 87(2)(b) stated that after she and PO Bodai exchanged words, PO Bodai turned back towards her and approached her closely. § 87(2)(b) asked, “What are you going to do?” PO Bodai replied “Square up.” At this point, PO Bodai was standing approximately one or two feet away from § 87(2)(b). Both of his hands were down at his sides and clenched into fists. § 87(2)(b) put the bags that she was holding down on to the floor and began to take her jacket off. § 87(2)(b) stated to the investigation that her intent at this point was to fight PO Bodai, because she believed that PO Bodai’s statement “square up” was a challenge to fight. As § 87(2)(b) got her jacket off, PO Bodai walked away from her.

In her statement, § 87(2)(b) stated that she saw § 87(2)(b) and PO Bodai “going back and forth,” although she could not determine what they were saying. Then PO Bodai said something along the lines of, “So what are you going to do about it then? So, what are you going to do? Do something then.” As he was saying this, PO Bodai was stepping towards § 87(2)(b) and pointing at her and then curling his fingers back towards him as if to indicate that he wanted § 87(2)(b) to come towards him. PO Bodai then put his hands up with closed fists and told § 87(2)(b) “Square up.” § 87(2)(b) threw everything that she was holding onto the ground and took her scarf off as if she was preparing to fight. § 87(2)(b) then began to walk over to § 87(2)(b) and PO Bodai while recording with her phone. § 87(2)(b) screamed at PO Jeanfrancois and PO Maldonado, “Why is he telling her to square up? This is unacceptable.” PO Maldonado then pushed PO Bodai away from § 87(2)(b).

In his statement, PO Bodai stated that § 87(2)(b) did not approach him, PO Jeanfrancois, and § 87(2)(b) or otherwise attempt to interfere while § 87(2)(b) was in the handcuffs. However, from a distance, § 87(2)(b) dropped her bag to the ground and “squared up,” but she was too far away for PO Bodai to consider her to be threat. PO Bodai denied approaching § 87(2)(b) and asking her to step back and did not ever need to establish a perimeter. After viewing video of the incident, PO Bodai stated that § 87(2)(b) stated that she was going to beat PO Bodai and PO Jeanfrancois “the fuck up.” § 87(2)(b) then dropped her bag to the ground and “squared up” by taking a stance that, to PO Bodai, looked like she was ready to fight. PO Bodai

used the specific term “squared up” in the interview unprompted and before his alleged use of that term was discussed. PO Bodai reached for his handcuffs, approached § 87(2)(b) and told her to back up 15 to 20 feet or else she could be arrested. PO Bodai did not recall making any other statements to § 87(2)(b). He again denied ever stating that he would fight § 87(2)(b).

PO Jeanfrancois stated that § 87(2)(b) was standing approximately two feet to the left of § 87(2)(b) while he was writing § 87(2)(b) a summons. Officers told § 87(2)(b) to move back and she yelled, “I’m gonna fuck y’all up. Cops ain’t shit.” § 87(2)(b) kept on moving towards the officers and told them she was going to “fuck them up.” § 87(2)(b) then put her hands up with her fists clenched, got into a fighting stance, and told PO Bodai that she was going to “fuck him up.” In response, PO Bodai put his hands up as well and told § 87(2)(b) “No you’re not.”

In her statement, PO Maldonado stated that § 87(2)(b) approached PO Bodai. Initially, PO Maldonado had her back to § 87(2)(b) and PO Bodai. PO Maldonado heard bags drop, so she turned around. She saw § 87(2)(b) walking towards PO Bodai with her hands up. PO Bodai took his handcuffs out and told § 87(2)(b) to back up. PO Maldonado did not have any discussion with PO Bodai about why he did this, but PO Maldonado was under the impression that § 87(2)(b) could have been arrested for Obstruction of Governmental Administration because she was interfering with them issuing a summons to § 87(2)(b). PO Maldonado did not hear any statements made by PO Bodai. She never heard PO Bodai say “square up.” PO Maldonado looked at § 87(2)(b) and told her to “Stop, go away. You’re going to get arrested. It’s just a summons everything will be okay.” She also told PO Bodai to go away because she wanted to diffuse the situation.

The cell phone video footage provided by § 87(2)(b) (**Board review 02**, transcribed in **Board review 10**) shows PO Bodai walking towards § 87(2)(b) until he is standing approximately three feet from her. § 87(2)(b) bags are on the ground by her left foot. The bags are moving as if they had just been dropped on the ground. § 87(2)(b) is clapping her hands together and loudly saying something to PO Bodai that is inaudible. § 87(2)(b) takes off her scarf and throws it on the ground. As she does this, PO Bodai takes a step towards her. She then takes a step back and bends her legs and puts her hands up. § 87(2)(b) can be heard saying, “Why are you telling her to square up.” At 0:07 to 0:09 in the video, PO Bodai is standing with his hands at his side and leaning slightly towards § 87(2)(b) and he says “Square up. Square up.” in § 87(2)(b) direction. § 87(2)(b) can be heard again saying, “Why is he telling her to square up.” PO Maldonado then puts a hand out directing PO Bodai to move away from § 87(2)(b). PO Bodai then walks away.

Patrol Guide Procedure 221-01 states that in all circumstances, any application or use of force must be reasonable under the circumstances. Officers should attempt to use de-escalation techniques to stabilize a situation and reduce or eliminate the necessity to use force (**Board Review 11**).

PO Bodai’s statement that he told § 87(2)(b) to back up or she would be arrested was made only after he saw the video. § 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

Allegations not pleaded

§ 87(2)(g)

Civilian and Officer CCRB Histories

- § 87(2)(b)
 -
- This is the first CCRB complaint to which § 87(2)(b) is a party (**Board Review 13**).
- PO Bodai has been a member-of-service for three years and this is the first CCRB complaint to which he has been a subject.
- PO Jeanfrancois has been a member-of-service for seven years and this is the first CCRB complaint to which he has been a subject
- PO Maldonado has been a member-of-service for nine years and has been the subject in two cases and three allegations, of which two were closed as complainant unavailable and one was closed as unsubstantiated.

Mediation, Civil and Criminal Histories

- § 87(2)(b) and § 87(2)(b) declined to mediate this complaint.
- The New York City Comptroller's Officer confirmed that no Notice of Claim was filed regarding this incident (**Board Review 14**).
- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]
- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

Squad No.: 10

Investigator: _____
Signature Print Title & Name Date

Squad Leader: _____
Signature Print Title & Name Date

Reviewer: _____
Signature Print Title & Name Date